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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 570

THE GEORGIA RAILWAY & ELECTRIC COMPANY, GEORGIA RAILWAY & POWER COMPANY AND GEORGIA POWER COMPANY,

Appellants,

vs.

CITY OF DECATUR.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA.

APPELLANTS' STATEMENT DISCLOSING BASIS OF JURISDICTION OF SUPREME COURT OF THE UNITED STATES.

By Act of Congress of January 31, 1928, "the writ of error in cases civil and criminal, is abolished." Said Act provides that all relief which could heretofore be obtained by writ of error shall thereafter be obtained by appeal.

The Act of April 26th, 1928, made the former statutes relating to right of writ of error applicable in cases of appeal provided for in the Act of January 31, 1928.

The Act of February 13th, 1925, defining the jurisdiction of the Supreme Court of the United States and re-enacting

Judicial Code Section 237 (28 U. S. Code Ann. 344) provides:

> "A final judgment or decree in any suit in the highest court of a State in which decision in the suit could be had * * * where is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

On the 18th day of September, 1934, the Supreme Court of the State of Georgia rendered final judgment in the case at bar and passed on the constitutional question now sought to be reviewed.

The case at bar was a civil one in which the appellee (City of Decatur) sought to recover of the appellants the sum of $13,444.66, with interest from the 21st day of June, 1926, on a special improvement paving assessment made against appellants under Georgia Laws 1919, page 934 *et seq.* and Georgia Laws 1924, page 534 *et seq.* To the petition filed by appellee, the appellants filed a demurrer and a motion to dismiss, drawing in question the validity of said statutes of the State of Georgia, and thereafter by answer, denying liability, also drew in question the validity of said statutes of the State of Georgia upon the ground that said statutes (under which the special assessment was made), were unconstitutional and repugnant to the Fourteenth Amendment of the Constitution of the United States in that they deprived appellants of the equal protection of the law and the due process of law and confiscated appellants' property in contravention of said constitutional provisions.

The trial court overruled each and every ground of said demurrer. Exceptions to said rulings were preserved in the manner provided for by State practice. Thereafter upon the trial of said case, a verdict was directed against

appellants for the full amount sued for, together with interest, and a judgment entered thereon. The said judgments and verdicts together with the decisions of the trial court, ruling that the said acts attacked were constitutional, were by proper method of State procedure carried to the Supreme Court of Georgia, the highest court in which a decision in said suit could be had. The said court sustained the judgment of the trial court and the verdict rendered against appellants, and rendered a decision in favor of the constitutionality of said acts under and by virtue of which the paving assessment against appellants had been made.

The provisions of Georgia Laws of 1919, page 934 *et seq.* and Georgia Laws 1924, page 534 *et seq.*, involved in the case at bar, are practically the same. Said acts provide that the City of Decatur, in the County of DeKalb, "shall have full power and authority, in their discretion, as hereinafter prescribed, to grade, regrade, pave, repave, build, rebuild and otherwise improve or reimprove any of the streets, alleys, lanes, squares or public places of said city now laid out and constructed. In order to make effective the power and authority above given and to provide funds therefor, said commissioners shall have full power and authority to assess the actual cost of such improvements above provided on the real estate abutting on any street, alley, lane, square or public place where improved, one-half (½) of the cost of such improvement shall be assessed against the real estate abutting on the other side of such street, alley, lane, square or public place where improved, and one-half (½) of the cost of such improvement shall be assessed against the real estate abutting on the other side of such street, alley, lane, square or public place where improved; and any street railroad company or other railroad company having a track or tracks running along or across the streets, alleys, lanes, squares or public places of said

city where so improved shall be required to pay the actual cost in full of grading, regrading, paving, repaving, building, rebuilding and otherwise improving or reimproving such street, alley, lane square or public place between their tracks and for two (2) feet on each side thereof and in such cases and on such streets, alleys, lanes, squares or public places where such assessments are made against such street railroad company or other railroad company, the remaining cost of such improvement shall be assessed against the real estate abutting on the street, alley, lane, square or public place where so improved, one-half (½) of such cost shall be assessed against the real estate "abutting on the street, alley, lane, square or public place where so improved, one-half (½) of such cost shall be assessed against the real estate abutting on one side of such street, alley, lane, square or public place and the other one-half (½) of said cost shall be assessed against the real estate abutting on the other side thereof; provided that no grading, regarding, paving, repaving, building, rebuilding, or otherwise improving or reimproving any street, alley, lane, square or public place in said city and no assessments made, under the authority, power and provisions of this section shall be made unless provided for by ordinance, such ordinance to provide for doing the work and notice of the introduction of which shall be published in some newspaper of said city, and if there is no newspaper published therein, then in some newspaper having a general circulation in said city, one time at least ten (10) days before the adoption of said ordinance, so that any person interested in said improvement may file his objection thereto with the city clerk and be heard by the commissioners. Said notice shall contain a statement of the street, alley, lane, square or public place to be improved or the part to be improved and the kind of improvements to be made, the date of the meeting of the

commissioners at which said ordinance will be considered for adoption, and the same may be adopted at said meeting or some subsequent meeting, in the discretion of the commissioners, after such notice has been given. The amount of the assessment on each piece of real estate abutting on the street, alley, lane, square or public place where such improvements have been made shall be a lien on the real estate, such lien dating from the time of the passage of the ordinance making the assessment; and the amount of the assessment for such improvement against said street railroad company or other railroad company and against the property thereof shall be a lien against such railroad company and against the property thereof, "dating from the time of the passage of the ordinance making the assessment. The said ordinance making the assessment against the abutting real estate and against such railroad company and the property thereof shall be made by the commissioners of said city after the completion of such improvements and when the cost thereof shall have been determined; and when the commissioners of said city have levied and assessed the cost of such improvement against the abutting real estate and against such street railroad company or other railroad company and against the property thereof, as above provided, they shall have full power and authority to enforce the collection of the amount of any such assessment so made for such improvement, by execution to be issued by the clerk of said city, against said abutting real estate and the owner thereof at the time of making the assessment and in accordance with such assessments, when the same is against such real estate; and against said street railroad company or other railroad company and against the property thereof when the same is against such railroad company and such property. Such executions shall be levied by the marshal

of said city and after advertising and other proceedings, as in the case of sale of realty for city taxes, such property so levied upon, whether the same be abutting real estate or property of such railroad company or companies, may be sold by the marshal of said city at public outcry to the highest bidder, and such sale shall vest absolute title to such property in the purchaser; * * *. The lien for the assessment on abutting property and on street railroad or other railroad companies for making street improvements as heretofore provided shall have rank and priority of payment next in point of dignity to liens for taxes."

The appeal in the case at bar seeks to carry to the Supreme Court of the United States for review the question of the validity of the said statutes of the State of Georgia on the ground that said statutes as construed and enforced against appellants were repugnant to the Fourteenth Amendment of the Constitution of the United States.

The decision of the Supreme Court of the State of Georgia in favor of the constitutionality of the said Georgia statutes brings the case at bar within the jurisdictional provisions of the Act of Congress of February 13, 1925, wherein Section 327 of the Judicial Code was re-enacted (28 U. S. Code Ann. 344), and the Acts of Congress of January 31, 1928, and of April 26, 1928, heretofore referred to.

Kansas City Sou. R. Co. v. *Road Improvement District*, 256 U. S. 658.

See also:

Thomas v. *Kansas City Sou. R. Co.*, 261 U. S. 481.

Norwood v. *Baker*, 172 U. S. 269.

Road Improvement Dist. No. 1 of Ark. v. *Missouri Pacific R. Co.*, 274 U. S. 188.

Standard Pipe Line Co. v. *Miller County Hwy. Dist.*, 277 U. S. 160, 162.

The decision of the Supreme Court of the State of Georgia sought to be reviewed was rendered on the 18th day of September, 1934, and the application for appeal from said decision to the Supreme Court of the United States is presented the 8th day of November, 1934.

Respectfully submitted,
WALTER T. COLQUITT,
COLQUIT, PARKER, TROUTMAN & ARKWRIGHT,
Attorneys for Appellants.

Service of the foregoing statement acknowledged, copy received. All other and further service and notice waived. This 8th day of November, 1934.

JAMES A. BRANCH,
BRANCH & HOWARD,
Attorneys for Appellee.

Filed in office Nov. 8, 1934, K. C. Bleckley, D. C. S. C., Ga.

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